

**481—67.12 (17A,231B,231C,231D) Enforcement action.** In all cases, if a regulatory insufficiency has been identified, the program shall comply with the plan of correction requirements in subrule 67.10(5). In addition, the department may take enforcement actions pursuant to this rule as a result of the program's noncompliance with applicable requirements.

**67.12(1) *Types of enforcement action.*** The department's enforcement action may include: denial, suspension, or revocation of a certification; issuance of a conditional certification and the placement of conditions upon a certificate such as requiring additional training; restriction of the program from accepting additional tenants for a period of time; or any other action or combination of actions deemed appropriate by the department.

**67.12(2) *Conditional certification.*** In lieu of denial, suspension or revocation of a certificate, the department may issue a conditional certification for a period of up to one year. A conditional certificate shall be issued only when regulatory insufficiencies pose no greater risk to tenant health or safety than the potential for causing minimal harm.

*a.* The department shall specify the regulatory insufficiency in the notice of enforcement action.

*b.* The department shall notify the tenant advocate when a conditional certificate is issued and when a conditional certification is lifted.

*c.* During the period of a conditional certification, the department shall conduct a monitoring to verify compliance prior to making the final certification decision.

*d.* The department shall issue reports pursuant to rule 481—67.10(17A,231B,231C,231D).

*e.* Failure by the program to adhere to the plan of correction may result in suspension or revocation of the conditional certification and may result in further enforcement action as available under applicable requirements.

*f.* A program must be in substantial compliance with applicable requirements before the removal of a conditional certificate by the department. Once the program is in substantial compliance with applicable requirements, the department shall lift the conditional certificate.

**67.12(3) *Civil penalties.***

*a. When civil penalties may be issued.* Civil penalties may be issued when the director finds that any of the following has occurred:

(1) Noncompliance results in imminent danger or substantial probability of resultant death or physical harm. A program that is in noncompliance with applicable requirements and the noncompliance results in imminent danger or a substantial probability of resultant death or physical harm to a tenant may be assessed a civil penalty of not more than \$10,000.

(2) A program has failed to comply, and the noncompliance has a direct relationship to the health, safety, or security of tenants. Following receipt of a final report from the department, a program which continues to fail or refuses to comply with applicable requirements within prescribed time frames established by the department or approved by the department in the program's plan of correction and the noncompliance has a direct relationship to the health, safety, or security of tenants may be assessed a civil penalty of not more than \$5,000.

(3) The program prevents or interferes with enforcement. A program that prevents, interferes with or attempts to impede in any way any duly authorized representative of the department in the lawful enforcement of applicable requirements may be assessed a civil penalty of not more than \$1,000.

*b. Factors in determining the amount of a civil penalty.* The department shall consider the following factors when determining the amount of a civil penalty:

(1) The frequency and length of time the regulatory insufficiency occurred (i.e., whether the regulatory insufficiency was an isolated or a widespread occurrence, practice, or condition);

(2) The past history of the program as it relates to the nature of the regulatory insufficiency (the department shall not consider more than the current certification period and the immediate previous certification period);

(3) The culpability of the program as it relates to the reasons the regulatory insufficiency occurred;

- (4) The extent of any harm to the tenants or the effect on the health, safety, or security of the tenants which resulted from the regulatory insufficiency;
- (5) The relationship of the regulatory insufficiency to any other types of regulatory insufficiencies which have occurred in the program;
- (6) The actions of the program after the occurrence of the regulatory insufficiency, including when corrective measures, if any, were implemented and whether the program notified the director as required;
- (7) The accuracy and extent of records kept by the program which relate to the regulatory insufficiency, and the availability of such records to the department;
- (8) The rights of tenants to make informed decisions;
- (9) Whether the program made a good-faith effort to address a high-risk tenant's specific needs and whether the evidence substantiates this effort.

*c. Civil penalties due.* The department may assess a civil penalty, which shall be paid to the department within 30 days following the program's receipt of the final notice of the enforcement action. The program may appeal the decision in accordance with rule 481—67.13(17A,231B,231C,231D).

*d. Automatic reduction of civil penalty if paid timely and no hearing is requested or request for hearing is withdrawn.* If a program has been assessed a civil penalty, does not request a formal hearing pursuant to rule 481—67.13(17A,231B,231C,231D) or has withdrawn the request for a formal hearing within 30 days of the notice or service, and the civil penalty is paid within 30 days of receipt of notice or service, the amount of the civil penalty shall be reduced by 35 percent. The notice of civil penalty shall include a statement to this effect.

*e. Suspension of civil penalty pending hearing.* If the program appeals the civil penalty, the civil penalty shall be deemed suspended until a final agency decision is reached in accordance with rule 481—67.13(17A,231B,231C,231D) and 481—Chapter 10.

*f. Duplicate penalties prohibited.* The department shall not impose duplicate civil penalties on a program for the same set of facts and circumstances.

**67.12(4) Immediate suspension of certificate.** When the department finds that an imminent danger to the health or safety of tenants of a program exists which requires action on an emergency basis, the department may direct removal of all tenants from the program and suspend the certificate or require additional remedies to ensure the ongoing safety of the program's tenants prior to a hearing.

**67.12(5) Immediate imposition of enforcement action.** When the department finds that an imminent danger to the health or safety of tenants exists which requires action on an emergency basis, the department may immediately impose a conditional certificate and accompanying conditions upon the program in lieu of immediate suspension of the certificate and removal of the tenants from the program if the department finds that tenants' health and safety would still be protected. The program may request a hearing pursuant to rule 481—67.13(17A,231B,231C,231D) on the immediate enforcement action, but the immediate enforcement action remains in effect regardless of the request for hearing.